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Attn: Noreen Johnson - IP Legal Department

2600 Sofamor Danek Drive MEMPHIS TN 38132

In re Application of: MOLZ, FRED J. IV

Serial No. 10/757,819 Filed: Jan. 15, 2004

Docket: MSDI-667/PC860.00

Title:

SPINAL IMPLANT CONSTRUCT

AND METHOD FOR IMPLANTATION

3/12/09

DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the petition filed March 5, 2009 under 37 CFR 1.181 requesting withdrawal of the finality of the last Office action mailed January 29, 2009.

The petition is granted.

It is noted that the record does show that in the amendment filed on September 25, 2008, the applicant did not substantively amend at least claim 27. There was no change in scope of at least claim 27. Therefore, the rejection of at least claim 27 under 35 U.S.C. 102(b) as being clearly anticipated by Miehelson (US 6,120,503 A) was not necessitated by the amendment filed on September 25, 2008.

As such, the finality of the Office action issued on January 26, 2009 is premature and the finality of the action is hereby withdrawn. The Office action mailed on January 26, 2009 will be designated as non-final Office action. The period to respond to the Office action of January 29, 2008 remains unchanged. Since the finality is being withdrawn, an amendment responding to the Office action will be treated as a 37 CFR § 1.111 amendment. In finding petitioner's points of argument persuasive, the requested relief is granted.

Since the finality is being withdrawn, any amendment responding to the Office action dated January 29, 2009 will be treated as a 37 CFR § 1.111 amendment. The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3774 for further processing. Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED.

Donald T. Hajec, Director Technology Center 3700